NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 736 of 2018

{Arising out of order dated 19.06.2018 passed by learned Single Judge in Writ Petition (L) No. 3339 of 2011}

- Assistant Provident Funds Commissioner, O/o Employees Provident Fund Organization, Regional Office, Near LIC Building, Pandari, Raipur (C.G.)

---- Appellant

Versus

1. M/s Mohanti English Medium School, Through its Secretary, Miss Mohanti's Education Society, Jarhabhata, Bilaspur (C.G.)

2. Employees Provident Fund Appellat Tribunal, Ministry of Labour and Employment, Government of India, Scope Minar, Code-II, 4th Floor, Laxmi Nagar, District Centre, Laxmi Nagar, New Delhi – 110092.

---- Respondents

For Appellant	:	Shri Sunil Pillai, Advocate.
For Respondent No.1	:	Shri N.K. Vyas, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

09.10.2018

1. The Provident Fund authorities of Raipur are in appeal against the order dated 19.06.2018 passed by the learned Single Judge who not only allowed the writ application filed on behalf of the assessee, but also held the decision of the Employees Provident Fund authorities imposing damages under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act of 1952'), to bad but also found the decision of the Employees

Provident Fund Appellate Tribunal, New Delhi to uphold the said order of the Assistant Provident Fund Commissioner, to be also erroneous.

2. The power to impose damages for non-compliance has been laid down in Section 14-B of the Act of 1952. However, the learned Single Judge, taking cue from series of decisions rendered by the Hon'ble Supreme Court while interpreting the scope and ambit of Section 14-B of the Act of 1952 had held that such power cannot be exercised in a mechanical fashion. There has to be finding recorded by such authority where the element of *mens rea* or *actus reus* is established, meaning thereby that intentional and deliberate effort made on the part of an assessee, not to comply with the requirements of filing returns and making deposits under the Act well within time must emerge.

3. So far as the law on this subject is concerned, there is no scope for any arguments for the time being. The elements required for imposition of damages under Section 14-B of the Act of 1952 can only be exercised provided the elements so laid down by the ratios of the decisions, taken note by the Hon'ble Single Judge are fulfilled.

4. We have heard the learned counsel for the Provident Fund Authorities who has also taken us through to the order passed under Section 14-B of the Act of 1952. We regret to observe that from the reading of the said order the elements or pre-conditions before exercise of power under Section 14-B of the Act do not emerge. In fact, it is a mechanical kind of order which has been passed with a foregone conclusion.

5. The manner and the mechanism in which the impugned order came to be passed by the Assistant Provident Fund Commissioner, therefore, was rightly interfered by the learned Single Judge and the mechanical imposition of damages under Section 14-B of the Act of 1952 amounting to Rs.1,79,8000/- was rightly quashed.

6. We do not find that any infirmity has been committed by the learned Single Judge in deciding the writ application in the manner in which it has been decided. Writ appeal, therefore, lacks merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan